Supreme Court, U.S.
FILED

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No._____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

APPEAL FROM
THE SUPREME COURT OF
THE STATE OF SOUTH CAROLINA

RICHARD T. QUILLIAN
.....PETITIONER

V.

PARKER EVATT, COMMISSIONER,SCDC, AND TONY STRAWHORN, DIRECTOR OF COMMUNITY SERVICES.
.....RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

Richard T. Quillian
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PETITIONER PRO-SE
December 15,1994

34 pp

QUESTIONS PRESENTED FOR REVIEW

1. WHETHER, PETITIONER WAS DENIED DUE PROCESS BY LOWER COURTS DENIAL OF CO-COUNSEL AND FAILURE TO PROVIDE LEGAL ASSISTANCE TO PRO-SE PRISONER AFFECTS A CLASS.

2. WHETHER, PETITIONERS' CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED BY DENIAL OF WORK RELEASE BASED ON PSYCHOLOGICAL EVALUATION DERIVED FROM PETITIONERS' 1ST AMENDMENT RIGHT TO FREEDOM OF SPEECH AND POLITICAL BELIEFS, FURTHER DENYING RIGHT TO REHABILITATIVE OPPORTUNITIES AND PROCEDURAL DUE PROCESS, AND WOULD AFFECT A CLASS.

3. WHETHER, PETITIONER HAS RIGHTS UNDER 42 USC SEC. 1983 AND ARE THE STANDARDS OF SOUTH CAROLINA JUDICIAL REVIEW BIASED AGAINST THE PETITIONER, WOULD FURTHER AFFECT A CLASS.

LIST OF ALL PARTIES

RICHARD T. QUILLIAN,
Petitioner

PARKER EVATT, Commissioner
South Carolina Department of Corrections
Respondent

TONY L. STRAWHORN, Director
SCDC Community Services
Respondent

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OPINIONS BELOW

The Opinion of the State of South Carolina Court of Appeals Affirmed the Circuit Courts Summary Judgment; Denied Petition for Rehearing.

The South Carolina Supreme Court Granted Precedent in favor of the Respondents; Denied Certiorari, thereby exhausting Petitioners' remedies.

JURISDICTION

The Certiorari Jurisdiction of this Court is invoked on the grounds that the South Carolina Supreme Court as well as the South Carolina Court of Appeals has applied a body of State law in respect to the Petitioners' claim of U.S.Constitutional Rights violations, as well as Due Process violations made by the Respondents, which is repugnant to and in violation of the Constitution and Federal law, and creates conflict between State law and Federal law which has not been, but should be settled by this Court. Jurisdiction in the Supreme Court of the United States is invoked under 28 U.S.C. Section 1257.

STATEMENT OF THE CASE

At the time Petitioner filed his lawsuit, he was an Inmate confined to the South Carolina Department of Corrections. The petitioner was serving a three year sentence for possession of marijuana. Petitioner was originally given probation for this offence; however, he violated the terms of his probation and was required to serve the remainder of his sentence at the Dept. of Corrections.

During his incarceration, Petitioner applied for work release. His application was filed on Oct. 10,1990. On Mar. 7,1991, Petitioner was informed that his application for work release was rejected based in part on a psychological evaluation that was performed in conjunction with his application.

In response to the rejection of his work release application and lack of a administrative relief to address his grievance in this matter, the Petitioner filed his lawsuit, in South Carolina Court of Common Pleas, Pursuant to 42 U.S.C. sec. 1983, for the violation of his Constitutional rights. The Petitioners' Pleadings purported to state a cause of action pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. 15-78-10, et seq.

The Petitioner filed several motions and request for hearings, as well as second successive motions and requests for hearings, which were never acted upon by the lower Court.

The Petitioner exhausted his States' remedies and now finds himself at the mercy of the United States Supreme Court as a last resort, and must rely on its decision.

ARGUMENTS IN SUPPORT OF PETITION

1. WHETHER, PETITIONER WAS DENIED DUE PROCESS BY LOWER COURTS DENIAL OF CO-COUNSEL AND FAILURE TO PROVIDE LEGAL ASSISTANCE TO PRO-SE PRISONER AFFECTS A CLASS.

Many prisoners are deeply involved in bring legal attacks against their convictions, sentences or actions made by corrections officials.

The State generally doesn't provide counsel in proceedings, at least until a court determines that the pleading requires an evidentiary hearing. Prisoners have no assistance or very limited preliminary assistance in asserting whether they have possible grounds for a collateral attack on their convictions, sentence or actions by prison officials and in drafting pleadings sufficiently directing the courts attention to valid claims. Because of the lack of officially provided legal assistance, prisoners naturally resort to self help.

In 1969 the Supreme Court held in **JOHNSON V. AVERY,** 393 U.S. 483, 69 S.Ct. 749, 21 L.Ed.2d 718 (1969) that unless prison officials provide reasonable legal assistance to inmates, they may not validly enforce a regulation baring inmates from helping each other with legal work. The decision followed lower court holdings striking down similar regulations in Florida **COONTS V. WAINWRIGHT,** 282 F.Supp. 893 (M.D.Fla.1968),*aff'd,* 409 F.2d 1337 (5th Cir.1969)., and at the Federal prison in Atlanta, Georgia, **WHITE V. BLACKWELL,**277 F.Supp. 211 (N.D.Ga.1967). A showing that any particular prisoner had actually been denied needed assistance, while the court apparently rested it's decision on a due process right of unimpeded access to the courts.

Following the **JOHNSON** decision, lower courts have struck down regulations against legal assistance in Alabama, **BEARD V. ALABAMA BOARD OF CORRECTIONS,** 413 f.2D 455 (5TH cir.1969) ; Arizona, **PREWITT V. STATE,** 315 F.Supp. 793 (D.Ariz.1969); California, **GILMORE V. LYNCH,** 319 F.Supp. 105 (N.D.Cal.1970),*aff'd sub nom.* **YOUNGER V. GILMORE,** 409 U.S. 15, 92 S.Ct. 250, 30 L.Ed.2d 142 (1971);**IN RE: HARRELL,** 2 Cal.3d 675, 470 P.2d 640, 87 Cal.Rptr. 504 (1970); New York, **WRIGHT V. McMANN,** 321 F.Supp. 127 (N.D.NY 1970),*aff'd*___F.2d ___,No. 35572 (2d Cir.Mar.16,1972); **CARROTHERS V. FOLLETE,** 314 F.Supp. 1014 (S.D.NY1970); Virginia's, **LANDMAN V. ROY STER,** 333 F.Supp. 621 (E.D.Va.1971); and Wisconsin, **CROSS V. POWERS,** 328 F.Supp. 899(W.D.Wis.1971).

It is not sufficient to offer prisoners law libraries, printed writ forms and other measures that merely facilitate self-help; what is required is counseling, drafting, and representation - in a word, legal services. The California Federal District Courts decree affirmed by the Supreme Court required the officials to submit a comprehensive

plan for meeting the legal needs of prisoners, **GILMORE V. LYNCH,** 319 F.Supp. 105 (N.D.Cal.1970).

The lower courts' denial of co-counsel prejudiced the Petitioners' case, where motions were filed, hearings were requested on motions, second successive motions and requests for hearings were made. The lower court only granted a Summary Judgment hearing at the request of the Respondents. Had co-counsel been granted, Petitioner would have preserved his issues for appeal, with assistance in knowing what can and should be preserved for appeal.

The Petitioner further, as the non-moving party for Summary Judgment was not viewed in a light most favorable.

A pro-se prisoner litigant should be given a little more latitude while under review.

The actions of the lower court in their decision making, affects a class.

2. WHETHER, THE PETITIONERS CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED BY DENIAL OF WORK RELEASE BASED ON PSYCHOLOGICAL EVALUATION DERIVED FROM PETITIONERS' FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH AND POLITICAL BELIEFS, FURTHER DENYING RIGHT TO REHABILITATIVE OPPORTUNITIES AND PROCEDURAL DUE PROCESS.

The Respondents' in their denial of work release based their decision on a psychological evaluation which reflected and stated the Petitioners religious and political beliefs. Even in cases where the officials may be able to make ashowing, as to substantive matter of their discretionary decision making, it has been held that officials must provide the prisoner with notice and an opportunity to be heard; his first Amendment right cannot be curtailed without procedural due process, **SOSTRE V. OTIS,** 330 F.Supp. 941 (S.D.NY1971).

The Second Circuit decision in **SOSTRE V. McGINNIS,** 442 F.2d 178 (2dCir.1971), dealt in part with political expression. Held that **SOSTRE'** constitutional rights had been violated, saying: "it is not a function of our prison system to make prisoners conform in their political thought and belief to ideas acceptable to their jailers." The Court of Appeals_ affirmed, stating that , since prisoners

may not be punished for their beliefs, they may not be punished for the mere expression of those beliefs.

Since more than 95% of prison inmates will be returned to society either on parole or upon expiration of their sentences, prison officials acknowledge an obligation to attempt to rehabilitate prisoners and return them to constructive living.

The manual of correction standards of the American Correctional Assoc. states that the prisons "basic purpose" is " the rehabilitation of those sent there by society." Despite rhetoric and statutory obligations, South Carolina's prisons don't actually provide meaningful rehabilitative opportunities for their inmates, rather, the prisons educational and vocational training is grossly inadequate, and idleness is the rule. Also, programs of psychiatric and psychological counseling are understaffed or non-existent.

The question here is whether prisoners have an enforceable right to access meaningful rehabilitative programs such as work release. An Analogy might be drawn to the rights of persons involuntarily committed to mental hospitals. There have been some indications that, where the reason for the commitment is the need for treatment, the failure actually to provide treatment violates constitutional rights, **WYATT V. STICKNEY,** 325 F.Supp. 781 (M.D.Ala.1971); see also **COVINGTON V. HARRIS,** 419 F.2d 617, 625 (D.C.Cir.1969); **ROUSE V. CAMERON,** 373 F.2d 451 (D.C.Cir.1966);"Symposiums- The Right to Treatment," 36 NU.Chi.L.Rev. 742 (1969).

No one case has held that a prisoner has a "right to rehabilatation." However, in **HOLT V. SARVER,**309 F.Supp. 362 (E.D.Ark.1970,*aff'd* 442 F.2d 304 (8th Cir.1971), the court held that the failure of the Arkansas prison system to provide any meaningful rehabilitative programs was one constitutionally significant factor bearing on the holding that the system was unconstitutional. Judge Lay's concuring opinion on Appeal emphasizes the need for "an affirmative program of rehabilatation." 442 F.2d at 310. Administrative decisions as to an inmates work assignment or participation in the educational programs will also determine whether he will have a chance to acquire skills needed for success on parole and subsequent to his release. Since these matters have such an important impact on the inmates present and future life, decisions denying access to rehabilitative opportunities should be made with

scrupulous regard for procedural fairness. In other words, the requirement of procedural due process should apply to these kinds of decisions as well as to disciplinary decisions imposing severe punishment.

In **MORRIS V. TRAVISONO,** 310 F.Supp. 857 (d.r.i.1970), the prison limited rehabilitative programs were unconstitutional because, *inter alia,* the classification decisions were made without procedural due process. The case was settled by comprehensive consent decree providing the prisoners with significant procedural rights.

If the consequences of prison officials discretionary decisions are made without an opportunity to contest the factual basis for the decision, as well as an adequate means of administrative appeal from such decisions, then due process has been denied.

The Petitioner has consistently claimed of constitutional violations, these violations involve a justiciable controversy. That there are concrete issues present, and there is a definitive assertion of legal rights and a positive legal duty with respect thereto, which has been denied by the Respondents.

There is an actual dispute among the parties, the Petitioner has challenged the governmental conduct, in the denying of work release because of a psychological evaluation (based on free speech) which has had a tangible effect upon the Petitioner. A justiciable controversy is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.

The Right to express ones opinion is unasailable, there was vagueness in restriction of Petitioners' request for work release, since denial of same was based on psychological evaluation an based on first amendment right of free speech. The objectionable quality of overbreath in area of First Amendment freedom depends on danger of tolerating existence of penal statute susceptible of sweeping and improper application. USCA Const. Amend. 1 - **STATE V. RAMSEY,** 430 SE2d 511.

The First Amendment ensures that persons may speak as they think on matters vital to them, and that noxious doctrines may be refuted and their evil averted by corageous exercise of right of free discussion. USCA Const. Amend. 1 **STATE V. RAMSEY,** 430 SE2d 511;; **THORNHILL V. ALABAMA,** 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940).

The First Amendment generally prevents government from proscribing speech or exspressive conduct because it disapproves of ideas expressed, USCA Const. Amend. 1 **STATE V. RAMSEY,** 430 SE2d 511.

The first Amendment mandates that government may not prohibit expression of ideas simply because society finds ideas themselves to be offensive,**TEXAS V. JOHNSON,** 491 US 397, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989).

When First Amendment Rights are involved, Supreme Court must look even more closley at legislatative enactment,list, under guise of regulating conduct, freedom of speech suffers, USCA Const. Amend. 1 **STATE V. RAMSEY,** 430 SE2d 511, **ASHTON V. KENTUCKY,** 384 US 195, 86 S.Ct. 1407, 16 L.Ed. 469 (1966).

3. WHETHER PETITIONER HAS RIGHTS UNDER 42 USC SEC. 1983 AND ARE THE STANDARDS OF SOUTH CAROLINA JUDICIAL REVIEW BIASED AGAINST THE PETITIONER, WOULD FURTHER AFFECT A CLASS.

The petitioner belies the hands-off doctrine is represented by the courts abdication of judicial responsibility for assuring that the rule of law doesn't stop at the prison gate and that prisoners constitutional rights would be judicially protected. While our courts continue to recite the familiar litany of noninterference with internal prison matters, it is now clear that in most serious cases Federal courts will assume jurisdiction, and decide the rights of prisoners vis-a-vis their custodians. Problems arise, however, in articulating the proper standards of judicial review and in deciding what, if any, jurisdictional hurdles must be cleared before the federal courts may exercise their jurisdiction. Even where the hands-off approach has lost it's doctrinal underpinnings, judges still resist hearing prisoners' cases on the merits, especially those filed (*in propria persona).* This is probably due to a rarely articulated fear of being inundated with incomprehensible, prolix, and exaggerated pleadings on which they are forced to rule.

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights,

privileges, or immunities secured by the Constitution and laws in an action at law, suit in equity, or other proper proceeding for redress." 42 USCA sec. 1983 (1964).

The Petitioners' prison suit challenges the prison decision making process and will meet the class action requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure and possible in a section 1983 suit. The class would ordinarily be all the inmates of the South Carolina Dept. of Corrections, a class so numerous that joinder of all members is impracticable. There are questions, law and fact common to the class. The claims of the petitioner are typical of the claims of the class and such would protect the interests of the class.

Prisoner class actions were maintained in **HAMILTON V. LOVE,** 328 F.Supp. 1182 (E.D.Ark.1971); **JONES V. WITTENBURG,** 323 F.Supp. 93 (N.D.Ohio 1971); **MORRIS V. TRAVISONO,** 310 F.Supp. 857 (D.R.I.1970); **CANDELARIA V. MANCUSI,** civil no.1970-491(W.D.NY Jan.7,1971); and **JACKSON V. McGINNIS,** civil no. 1969-435 (W.D.NY Dec.18,1970), among other many cases. Compare **INMATES OF THE ATTICA CORRECTION FACILITY V. ROCKEFELLER,** 453 F.2d 12 (2D Cir.1971)(class action permitted as to one claim); **McCLELLAND V. SIGLER,** 327 F.Supp. 829, 835 (D.Neb.1971)(plaintiffs invited to amend complaint to state class action).

In a section 1983 suit, it is clear the court must proceed to determine on the merits whether the prisoners are entitled to relief for violations of rights under section 1983, **JACKSON V. BISHOP,** 404 F.2d 571 (8th Cir.1968);**PENNSYLVANIA V. BROWN,** 260 F.Supp. 323,332 (E.D.Pa.1966), modified on other grounds 373 F.2d 771 (3rd Cir.1967), note, "constitutional rights of prisoners: The Developing Law," 110 U.Pa.L.Rev. 983,987 (1962).

The Supreme Court has now made it very clear that no prisoner complaint should be dismissed for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." **CRUZ V. BETO,** ___US___, No. 71-5552(Mar.20,1972); **HAINES V. KERNER,** 404 US___,92 S.Ct. 594, 30 L.Ed.2d 652 (1972); cf. **CONLEY V. GIBSON,** 355 US 41,45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1965).

A sounder approach, and the approach most in keeping with our constitutional traditions, is the presumption that "a prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, takes from him by law," **COFFIN V. REICHARD,** 143 F.2d 443,445 (6th Cir.1944),cert.Den.,355 US 887 (1945). The Fifth Circuit has stated a similar notion of Judicial review,"[A]ny further restraints or depravation's in excess of that inherent in the sentence and in the normal structure of prison life should be subjected to judicial scrutiny." **JACKSON V. GODWIN,** 400 F.2d 529,535 (5th Cir.1968).

All prison rules limiting or affecting the rights of prisoners should be subjected to the test of due process reasonableness, **GILMORE V. LYNCH,** 319 F.Supp. 105: "[P]rison rules must pass the basic test of due process reasonability, with that test being more or less stringent according to the character of the right taken from the prisoner."

Suits challenging administrative decisions who's procedural guarantees are inadequate to guard the decision making process against arbitrariness, decisions which may result in "grievous loss" to the prisoner raise federal claims, **GOLDBERG V. KELLY,** 397 US 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); **WILLIAMS V. ROBINSON,** 432 F.2d 637 (D.C.Cir.1970).

The Civil Rights Attorneys Fees Award Act of 1976 (42 USC sec. 1988) now provides that on certain civil rights actions, including those brought under 42 USC sec. 1983, Federal Courts may award the prevailing party reasonable attorneys fees as a part of the costs. In **HUTTO V. FINNEY,** 437 US___, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978), the Supreme Court affirmed awards of attorneys fees in favor of the plaintiffs, inmates in the Arkansas Correctional system. The Court rejected the argument of the defendant state officials that they were shielded from such an award by the Eleventh Amendment. Congress has full power to set aside the states' Eleventh Amendment immunity in order to enforce the Fourteenth Amendment; by passing the 1976 Act, "Congress undoubtedly intended to exercise that power...".

The equal protection clause of the 14th Amendment is applicable to all citizens USCA Const. Amend. 14. **ESLINGER V. THOMAS,** 340 F.Supp. 886, *aff'd* in part, *rev.* in part 476 F.2d 225. The equal protection of the laws, extend to the guilty as well as the

innocent, and to law-abiding citizens as well as criminals USCA Const. Amend. 14, **STATE V. MIDDLETON,** 36 SE2d 742, 207 SC 478. Equal protection functions to protect the citizen from the state, it does not protect the state. Const. Art. 1 sec. 3, USCA Const. Amend. 14, **HIBERNIAN SOC. V. THOMAS,** 319 SE2d 339, 282 SC 465. "person" entitled to equal protection of law as used in 14th Amend to the U.S. Const. doesn't include a agency created and controlled by a state, USCA Const. Amend. 14. **HIBERNIAN SOC. V. THOMAS,** 319 SE2d 339, 282 SC 465.

State prisoners have some First and Fourteenth Amendment rights to air their grievances and to have access to judicial procedures to redress them, USCA Const. Amends. 1, 14; 42 USCA sec. 1983, 1985, **TIMMERSON V. BROWN,** 528 F.2d 811.

CONCLUSION

Based upon the arguments and authorities presented, the Petitioner respectfully submits that the decisions of the South Carolina Supreme Court; the South Carolina Court of Appeals as well as the respondents' body of South Carolina law upon which it is based is repugnant to the United States Constitution and violates the Petitioners rights. This Court should grant Certiorari be granted on these issues.

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Socastee, South Carolina
December 19 1994

CERTIFICATE OF SERVICE

I, Richard T. Quillian, Petitioner Pro-Se, do hereby certify that I have served the foregoing Petition for Writ of Certiorari, by depositing copies of same in the United States Mail, postage prepaid, with return receipt requested, on or before the 19 day of December, 1994, addressed as follows:

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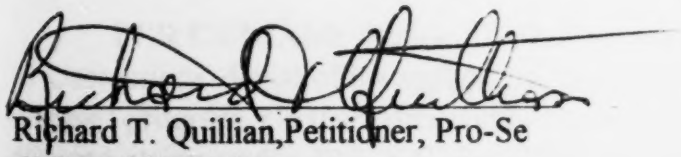

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Appendix A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Richard T. Quillian, Petitioner

v.

Parker Evatt, Commissioner, SCDC, And Tony L. Strawhorn, Director of Community Services, Respondents.

Appeal from Richland County, Joseph A. Wilson,II, Circuit Court Judge

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Opinion No. 2199
(formerly Unpublished Opinion No. 94-UP-129)
Submitted March 8, 1994 - Filed April 13, 1994

AFFIRMED

Richard T. Quillian, of Surfside Beach, pro-se.

William H. Davidson, II, and Andrew F. Lindemann, both of Ellis, Lawhorne, Davidson & Sims, of Columbia, for Respondents.

PER CURIAM: Richard T. Quillian appeals the Department of Corrections' denial of his application for entry into the "work release" program. He thereafter commenced the present action, alleging claims under 42 U.S.C. Sec. 1983 and the State Tort Claims Act, S.C. Code Ann. Sec. 15-78-10 et seq. (Supp>1993). The trial judge granted summary judgment to the respondents. We affirm.

Claims under 42 U.S.C. Sec. 1983 are not available for all alleged torts of state officials or injuries allegedly suffered at the hands of state officials. Rather, such claims are limited to violations of rights protected by the United States Constitution and federal law. E.g., White v. Thomas, 660 F.2d 680 (5th Cir.1981), cert. denied, 455 U.S. 1027, 102 S.Ct. 1731 (1982). Participation in a work-release program is a privilege, not a right. Gunter v. State, 298 S.C.

113, 378 S.E.2d 443 (1989), overruled in part on other grounds, Griffin v. State, ___S.C.___, 433 S.E.2d 862 (1993) (ex post facto clause precludes retroactive application of change in timetable for review of parole eligibility). Thus, the denial of participation in work-release program, standing alone, affords no basis for a claim under 42 U.S.C. Sec. 1983.

As to the Department, it is immune from liability under the discretionary immunity afforded by S.C. Code Ann. Sec. 15-78-60(5) (Supp.1993). The decision to grant or deny an application for participation in the work-release program clearly involves "the exercise of discretion or judgment" protected by Sec. 15-78-60 (5). See S.C. Code Ann. Sec. 24-3-20 (b) (1989) (Board of Corrections "may" grant work-release when it "determines that the character and attitude of a prisoner reasonably indicates that he may be so trusted..."); see also Gunter, 298 S.C. at 116, 378 S.E.2d at 444 ("The Board of Corrections has discretion whether to allow an inmate even to participate in a work release program.")(emphasis added); cf. Davis v. State, 274 S.C. 549, 265 S.E.2d 679 (1980)(Board, rather than sentencing judge, is to "determine" a prisoner's eligibility under Sec.24-3-20). Contrary to the appellant's argument, the record conclusively demonstrates the Department engaged in the conscious decision making required by law. See Foster v. South Carolina Dep't of Hwys. and Pub. Transp., 306 S.C. 519, 413 S.E.2d 31 (1992), citing Niver v. South Carolina Dep't of Hwys and Pub. Transp., 302 S.C. 461, 395 S.E.2d 728 (Ct.App.1990).

On appeal, Quillian argues numerous other issues including raising claims under 42 U.S.C. Sec. 1983, denial of due process, denial of equal protection, and retaliation for exercise of constitutional rights. None of these issues are preserved for appeal. He failed to raise many of these issues to the trial judge. More importantly, the trial judge did not rule on any of these issues, nor did Quillian seek rulings by post-trial motions, therefore, this court cannot consider these issues on appeal.

Accordingly, the appealed order is

AFFIRMED.

HOWELL, A.C.J.,SHAW,J.,CURETON,J..

APPENDIX B

STATE OF SOUTH CAROLINA
In The Court of Appeals

Richard T. Quillian, Appellant,

v.

Parker Evatt, Commissioner, SCDC, and Tony L. Strawhorn, Director of Community Services, Respondents.

Appeal from Richland County
Joseph A. Wilson,II, Circuit Court Judge
Civil Action No. 91-CP-40-1788

Rule 221 Petition for Rehearing and Judicial Notice

Appellant moves this court to stay remittiteur of this matter and to grant Appellant a rehearing and take judicial notice as to the following issues below.

In this court's opinion, it quotes Griffin v. State, ___S.C.___, here, this court states 'standing alone, affords no basis for a claim under 42 USCA Sec. 1983' but this is not the case here since the Appellants rights are guaranteed by the Constitution of the United States ie: Religious and political beliefs, which were the basis of the decision made by the respondents, further, respondents used the disciplinary incident which was well after the filing of the action against them as a defense.

This court has failed to see from the transcript (which if oral argument was given the appellant, he would have explained) how the appellant had filed many motions, successive motions and requests for hearings in a timely fashion before the respondents moved for summary judgment - this too would be issues preserved for appeal and they are a part of the record.

In S.C. Code Ann. Sec. 24-3-20 (b) (1980) [note: the 1987 through 1992 cumulative supplements were not adopted by the General Assembly during the 1988 through 1993 sessions and therefore were not official] states: 'when the Board determines...' the respondents are not the Board of Corrections that the Statute alludes

to. The respondents are required by the policies of the Department to make a determination and if an inmate is not approved, then the matter is required (and is mandatory in language) to be brought before the Board of Corrections, then it is theirs to make the final determination. None of these procedures were followed, and verbatim S.C. Code Ann. Sec. 24-3-20 (1989) States: "Convicted persons shall be in custody of Board of Corrections; Board shall designate place of confinement; allowing prisoners to work at paid employment or participate in training programs: litter removal;..." (emphases added).

This is mandatory language and therefore give rise to a liberty interest. This law as well as the others quoted by this court were changed after filing date on appellants summons and complaint filed in the lower court.

This court has misquoted the law here, which would be apparent to any that would open the book and read it - no where does it say: "Board of Corrections "may" grant work-release when it determines that the character and attitude of a prisoner reasonably indicates that he may be so trusted...".

The new law is where this court is resting, but that would be an 'ex post facto' error, for this is where this court is basing their ruling.

If the law this court is relying on was active at the time of appellants filing of his action he still would have a constitutional standing on freedom of religious and political beliefs.

In White v. Thomas, 660 F2d 680 (1981), the appellants rights would be preserved in that the results of respondents actions, did deprive him of rights, priviledges or immunities secured by the U.S. Const. and laws of the U.S. 42 USCA Sec. 1983.

The appellant was a misdemeanor prisoner and his civil and political rights were never taken from him.

This court can not allow state law - which was not in effect at the time, to take precedent over U.S. law, to do so would be violative of the Civil Rights Act of 1871.

WHEREFORE, having set forth grounds therefor, the appellant moves this court for a stay of remittur and a hearing upon the issues.

Respectfully submitted,

/s/ Richard T. Quillian,appellant,pro-se

Surfside Beach, South Carolina
April 26,1994.

APPENDIX C

THE SOUTH CAROLINA COURT OF APPEALS

Richard T. Quillian, Appellant,

v.

Parker Evatt, Commissioner, SCDC, And Tony L. Strawhorn, Director of Community Services, Respondents.

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and, hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

/S/ William T. Howell A.C.J.
/S/ Curtis G. Shaw A.J.
/S/ Jasper M. Cureton A.J.

Columbia, South Carolina
June 17, 1994.

APPENDIX D

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Richland County
Court of Common Pleas, Fifth Judicial District
Joseph A. Wilson,II, Circuit Court Judge

Op. No. 94-UP-129
Case No. 91-CP-40-1788

Richard T. Quillian — Appellant

v.

Parker Evatt, Commissioner, South Carolina Department of Corrections, Tony Strawhorn, Director of Division of Community Services — Respondents.

RESPONDENTS MOTION TO PUBLISH OPINION OF THE COURT

The respondents, Parker Evatt and Tony L. Strawhorn, move this court to have the opinion of the South Carolina Court of Appeals in Quillian v. Evatt et al., Op. No. 94-UP-129 (filed April 13,1994), published so that it will have precedential value.

The grounds for this motion are set forth in greater detail in the Respondents' supporting memorandum filed herewith.

The Respondents' motion is based on the opinion of the South Carolina Court of Appeals in Quillian v. Evatt et al., Op. No. 94-UP-129 (filed April 13, 1994), the briefs filed by both parties, the Record on Appeal, the South Carolina Appellate Court Rules, the Respondents' supporting memorandum, and Rule 220, SCACR.

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APRIL 28, 1994.

APPENDIX E

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Richland County
Court of Common Pleas, Fifth Judicial District
Joseph A. Wilson,II, Circuit Court Judge

Op. No. 94-UP-129
Case No. 91-CP-40-1788

Richard T. Quillian — Appellant

v.

Parker Evatt, Commissioner, South Carolina Department of Corrections; Tony Strawhorn, Director of Division of Community Services — Respondents.

MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION TO PUBLISH OPINION OF THE COURT

STATEMENT OF THE CASE

While an inmate confined to the South Carolina Department of Corrections, the Appellant, Richard T. Quillian, applied for work release. That application for work release was rejected based in part on a psychological evaluation that was performed in conjunction with his application, Quillian filed this lawsuit, pursuant to 42 U.S.C. Sec. 1983, for the alleged violation of his constitutional rights. Quillian's complaint also purports to state a cause of action pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. Sec. 15-78-10, et seq.

The Respondents, Parker Evatt, the Commissioner of the South Carolina Department of Corrections, and Tony L. Strawhorn, the Director of the Division of Community Services, filed a motion for summary judgment, which was heard by the Honorable Joseph A. Wilson,II, on January 22, 1992. By his order dated March 4, 1992,

Judge Wilson granted summary judgment in favor of the respondents. The Appellant Quillian then appealed to the South Carolina Supreme Court, which appeal was assigned to the South Carolina Court of Appeals. By an unpublished opinion filed on April 13, 1994, the Court of Appeals. affirmed the lower court's decision. See, Quillian v. Evatt et al., Op. No. 94-UP-129 (Filed April 13,1994).

The Respondents have now moved to have the opinion of the South Carolina Court of Appeals published so that it will have precedential value, pursuant to Rule 220, SCACR.

DISCUSSION

The primary issue raised by Quillian's appeal is whether South Carolina law affords an inmate of the Department of Corrections a due process liberty or property interest with regards to that inmate's participation in a work release program. In its unpublished opinion, the Court of Appeals conclusively held that "[p]articipation in a work-release program is a privilege, not a right." see, Quillian v. Evatt et al., Op. No. 94-UP-129 (Filed April 13, 1994). The Court correctly reached this conclusion based upon the discretionary language contained in the work release Statute, S.C. Code Ann. Sec. 24-3-20(b), and based upon the case of Gunter v. State, 298 S.C. 113, 378 S.E.2d 443 (1989), overruled in part on other grounds, Griffin v. State, ___S.C.___, 433 S.E.2d 862 (1993).[1] The Court of Appeals, however, does not presently intend to publish this opinion.

The Respondents submit that this precise issue arises frequently in prisoner litigation filed pursuant to 42 U.S.C. Sec. 1983. Given the procedural system set up in the federal courts, a majority of these cases are and decided by the federal courts, where the federal judges are placed in the position of interpreting South Carolina law on this issue. Until the Quillian decision was issued, the federal courts have not had any guidance from the South Carolina appellate courts, with the exception of the Gunter decision. The Gunter decision, however, does not address this issue from a constitutional perspective.

The United States Supreme Court has repeatedly held that property or liberty interests " are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." Board of Regents v. Roth,

408 U.S. 564,577 (1972). In other words, "the sufficiciency of the claim of entitlement must be decided by reference to state law." Bishop v. Wood, 426 U.S. 341,344 (1976). Therefore, this precise issue is not a federal issue nor is it a constitutional issue. It is a question of only state law. And, the South Carolina Appellate Courts are the only tribunals that may authoritatively and conclusively interpret South Carolina Law.

In its Quillian decision, the South Carolina Court of Appeals has authoritatively stated that "[p]articipation in a work release program is a privilege, not a right." other courts, including most specifically the federal courts, would benefit greatly from this clear interpretation of South Carolina law on this issue. For that reason, the Respondents respectfully request that the South Carolina Court of Appeals order that its opinion be published so as to give this decision precedential value.

Furthermore, in its Quillian decision, the Court of Appeals has provided guidance to the state courts and the federal courts as to how to address a cause of action under the South Carolina Tort Claims Act with regard to the denial of an application for participation in a work release program. Such state law tort claims sally arise, as in the present case, in conjunction with a section 1983 constitutional claim. The Court's decision in Quillian, therefore, has also provided invaluable guidance for other courts and litigants faced with adjudicating such a claim. For this additional reason, the Respondents believe and submit that the publishing of the Court's decision in this case should be reconsidered.

CONCLUSION

Based on the foregoing discussion, the Respondents, Parker Evatt and Tony L. Strawhorn, respectfully request that this court reconsider its decision not to publish its opinion in Quillian v. Evatt et al., Op.No. 94-UP-129 (Filed April 13,1994), and that this Court order the opinion be published so as to give the opinion precedential value and so as to provide invaluable guidance to other courts faced with interpreting South Carolina law on this frequently raised issue.

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APPENDIX F

THE SUPREME COURT OF SOUTH CAROLINA

Richard T. Quillian Petitioner,

v.

Parker Evatt, Commissioner, SCDC, and Tony L. Strawhorn, Director of Community Services, Respondents.

ORDER

Petitioner has filed a petition for a writ of certiorari seeking review of the Court of Appeals' decision in Quillian v. Evatt, ___S.C.___, 445 S.E.2d 639 (Ct.App.1994), and asks to be allowed to proceed in forma pauperis. After a careful consideration of the petition, return, and appendix, we deny the petition for a writ of certioari. The motion to proceed without costs is denied as unnecessary.

IT IS SO ORDERED.

/S/ A. Lee Chandler C.J.
For The Court

Columbia, South Carolina
September 22, 1994.

[1] In Gunter v. Stae, 298 S.C. 113, 378 S.E.2d 443 (1989), the South Carolina Supreme Court interpreted the work release Statute as follows:

The Board of Corrections has discretion whether to allow an inmate even to participate in a work release program. Therefore, participation in a work release program is a privilege, giving rise to no vested rights cognizable under the ex post facto doctrine. 378 S.E.2d at 444. Therefore, as determined by the Gunter Court, work release in South Carolina is not a right; it is a privilege. It does not give rise to a property or liberty interest that is protected by the

Due Process Clause.

(2)

Supreme Court, U.S.
FILED
JAN 17 1995
OFFICE OF THE CLERK

No. 94-1110

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

RICHARD T. QUILLIAN,

Petitioner

v.

PARKER EVATT, COMMISSIONER, SCDC, AND TONY L. STRAWHORN, DIRECTOR, DIVISION OF COMMUNITY SERVICES,

Respondents.

ON WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT AND THE SOUTH CAROLINA COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. The issues raised by the Petitioner in his petition for writ of certiorari to the United States Supreme Court are not properly preserved on appeal. Nonetheless, the South Carolina Supreme Court and the South Carolina Court of Appeals correctly decided the issues properly preserved on appeal. 4

II. The Petitioner has failed to demonstrate sufficient reasons for the issuance of a writ of certiorari. 9

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STATEMENT OF THE CASE

While an inmate confined to the South Carolina Department of Corrections (SCDC), the Petitioner, Richard T. Quillian, applied for work release. That application for work release was rejected based in part on a psychological evaluation that was performed in conjunction with his application. In response to the rejection of his work release application, Quillian filed this lawsuit, pursuant to 42 U.S.C. § 1983, for the alleged violation of his constitutional rights. Quillian's complaint also purports to state a cause of action pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq.

The Respondents, Parker Evatt, the Commissioner of the South Carolina

Department of Corrections, and Tony L. Strawhorn, the Director of the Division of Community Services, filed a motion for summary judgment, which was heard by the Honorable Joseph A. Wilson, II, on January 22, 1992. By his order dated March 4, 1992, Judge Wilson granted summary judgment in favor of the Respondents. The Petitioner Quillian then appealed to the South Carolina Supreme Court, which appeal was assigned to the South Carolina Court of Appeals. By its opinion filed on April 13, 1994, the Court of Appeals affirmed the lower court's decision. See, Quillian v. Evatt, ___ S.C. ___, 445 S.E.2d 639 (Ct. App. 1994). The Petitioner then petitioned the Court of Appeals for a rehearing, which was denied.

The Petitioner Quillian thereafter filed a petition for a writ of certiorari with the South Carolina Supreme Court. By

order dated September 22, 1994, the South Carolina Supreme Court denied Quillian's petition.

The Petitioner Quillian has now filed a petition for writ of certiorari with the United States Supreme Court. The Respondents oppose the granting of a writ of certiorari in this case.

REASONS FOR DENYING WRIT

I. THE ISSUES RAISED BY THE PETITIONER IN HIS PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT ARE NOT PROPERLY PRESERVED ON APPEAL. NONETHELESS, THE SOUTH CAROLINA SUPREME COURT AND THE SOUTH CAROLINA COURT OF APPEALS CORRECTLY DECIDED THE ISSUES PROPERLY PRESERVED ON APPEAL.

In his petition for a writ of certiorari, the Petitioner Quillian raises three issues that can be best summarized as follows:

(1) that the Petitioner was wrongly deprived of legal assistance in his pursuit of these claims;

(2) that the Petitioner's constitutional rights were violated by the denial of work release; and

(3) that the "standards of judicial review" are "biased" against him.

With the possible exception of the second issue, these issues were not raised in

Quillian's petition for rehearing to the South Carolina Court of Appeals. Moreover, these issues were raised <u>for the first time</u> in Quillian's petition for writ of certiorari to the South Carolina Supreme Court.[1] Rule 226(d)(2), SCACR,[2] provides: "Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." Therefore, Rule 226(d)(2) clearly

---

[1] It should be noted that Quillian's petition for writ of certiorari to the United States Supreme Court is identical to his petition for writ of certiorari to the South Carolina Supreme Court. The issues raised in these petitions, however, are not the issues originally raised on appeal and are not the issues addressed by the South Carolina Court of Appeals. Quillian has raised these issues for the first time after the decision by the South Carolina Court of Appeals was issued.

[2] South Carolina Appellate Court Rules (SCACR).

prevented the consideration of the Petitioner's first and third issues by the South Carolina Supreme Court. Likewise, the United States Supreme Court is prevented from addressing those issues because they were not properly raised nor preserved for appeal in the lower courts.

Moreover, with regard to the second issue set forth in Quillian's petition, that issue also was not raised nor addressed by the South Carolina Court of Appeals. The Court of Appeals considered whether the Petitioner had a liberty interest in participating in a work release program. The Court concluded that "the denial of participation in a work-release program, standing alone, affords no basis for a claim under 42 U.S.C. § 1983." Quillian v. Evatt, ___ S.C. ___, 445 S.E.2d 639, 640 (Ct. App. 1994).

The Petitioner did raise for the first time in his petition for rehearing to the Court of Appeals that he was denied work release because of his political and religious beliefs. That issue was not raised in the lower court nor was it ruled upon by the lower court. In its decision, the Court of Appeals correctly stated that various constitutional claims, including any First Amendment claim, were not preserved for appeal:

> On appeal, Quillian argues numerous other issues including raising claims under 42 U.S.C. § 1983, denial of due process, denial of equal protection, and retaliation for exercise of constitutional rights. None of these issues are preserved for appeal. He failed to raise many of these issues to the trial judge. More importantly, the trial judge did not rule on any of these issues, nor did Quillian seek rulings by post-trial motions, therefore, this court cannot consider these issues on appeal.

Quillian v. Evatt, ___ S.C. ___, 445 S.E.2d 639, 640 (Ct. App. 1994).[3] Furthermore, there is absolutely no evidence in the record to suggest that Quillian was denied participation in a work release program because of his religious or political beliefs.

Consequently, even if the Petitioner's second issue was not properly preserved on appeal and lacks merit. In short, the decision of the South Carolina Court of Appeals was a correct one, and, as discussed below, the Petitioner has presented no argument which favors the issuance of a writ of certiorari in this case.

---

[3] The Petitioner Quillian has not sought review of this portion of the decision of the South Carolina Court of Appeals in his petitions to either the South Carolina Supreme Court or the United States Supreme Court.

II. THE PETITIONER HAS FAILED TO DEMONSTRATE SUFFICIENT REASONS FOR THE ISSUANCE OF A WRIT OF CERTIORARI.

Supreme Court Rule 10 sets forth several reasons to support the United States Supreme Court's issuance of a writ of certiorari. The Petitioner has failed, however, to demonstrate that the present case falls within any of those criteria. First, the decisions of the South Carolina Supreme Court and South Carolina Court of Appeals do not conflict with any decision of a federal court of appeals on the same matter. Second, the decisions of the South Carolina Supreme Court and South Carolina Court of Appeals do not conflict with any decision of a state court that addresses similar issues. And third, the decisions of the South Carolina Supreme Court and South Carolina Court of Appeals

do not conflict with any decision of the United States Supreme Court.

CONCLUSION

Based on the foregoing reasoning and analysis, the Respondents respectfully submit that the South Carolina Supreme Court and South Carolina Court of Appeals correctly decided this case and that there is no reason for this Court to issue a writ of certiorari.

Respectfully submitted,

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